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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1943

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NATIONAL LABOR RELATIONS BOARD, *Petitioner*,

v.

STOWE SPINNING COMPANY, ARNIL SPINNING COMPANY, PEPPERELL MANUFACTURING COMPANY AND LINDSLEY MILLS, INC.

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ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS OF THE FOURTH CIRCUIT

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## BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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**On Writ of Certiorari to the Circuit Court of Appeals for the Fourth Circuit**

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## BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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### OPINIONS BELOW

The opinion of the court below (R. 137-147), is reported in 165 F. 2d 609. The findings of fact, conclusions of law, and order of the Board (R. 1-26), are reported in 70 N. L. R. B. 614.

## JURISDICTION

The decree of the court below was entered on December 22, 1947 (R. 148-149). The petition for a writ of certiorari was granted on June 1, 1948.[1] The jurisdiction of this Court was invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 now 28 U. S. C. 1254, and Section 10 (e) and (f) of the National Labor Relations Act.

## QUESTION PRESENTED

The employers, owners of a company-town, maintain a hall for the convenience of employee-residents and others which is the only place in the community appropriate for group meetings. Because of their hostility to unionization and their desire to impede self-organizational efforts among the employee-residents, the employers denied to a labor organization permission to use the hall for a union meeting. The question presented is whether, in the circumstances of this case, the Board could properly find that the employers, by such denial of the use of the hall, interfered with the exercise of the rights guaranteed employees under Section 7 of the Act, in violation of Section 8 (1).

[1] On the same date this Court denied the petition of Stowe Spinning Company for certiorari to review the judgment of the court below insofar as it enforced the Board's order requiring the Company to reinstate with back pay four employees found by the Board to have been discriminatorily discharged. No. 676, October Term, 1947.

## STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. 151, *et seq.*) are set forth in the Appendix, infra, pp. 41-42.[2]

## STATEMENT

Upon the usual proceedings under Section 10 of the Act, the Board, on August 26, 1946, issued its findings of fact, conclusions of law and order (R. 1-26). The pertinent facts, as found by the Board and as shown by the evidence, may be summarized as follows:[3]

Stowe Spinning Company, Acme Spinning Company, Perfection Spinning Company, and Linford Mills, are four North Carolina corporations, with interlocking directorships, hereinafter collectively referred to as the employers, each of which operates a cotton spinning mill in the unincorporated village of North Belmont, North Carolina (R. 3-5; 28, 30-31).[4] The employers own a large number of houses adjacent to their respective mills which they

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[2] The question here presented is not affected by the amendments to the National Labor Relations Act enacted in the Labor Management Relations Act of 1947 (61 Stat. 136, 29 U. S. C., Supp. I, 141, *et seq.*).

[3] In the following statement record references preceding the semicolon are to the Board's findings; succeeding references are to the supporting evidence.

[4] Geographically, North Belmont is located two and a half miles from the City of Belmont, North Carolina (R. 4; 29).

rent to employees and their families (R. 4; 29, 31-32, 34, 102).[5] These groups of houses, called "mill villages," together with the employers' mills, comprise North Belmont (R. 4; 29). The town is policed by a deputy sheriff who is paid by the employers (R. 4; 36-37, 38).

There are only three buildings of a more or less public nature in the town. One is a public school building, owned by the state, but controlled by a school board composed entirely of officers of the employers (R. 4, 8; 32, 114-115). Another is a motion picture theater, owned and controlled by the employers jointly, but operated by a lessee (R. 4, 8; 32-33, 37, 84, 109-110). The third building, known as the P. O. S. of A. Building—the initials denoting the Patriotic Order Sons of America—is likewise owned and controlled by the employers and houses a United States Post Office and a grocery store on the first floor, and an assembly or meeting hall, seating approximately two hundred persons, on the second (R. 5; 33-42). This building was erected by the employers in 1937 to provide shopping facilities and a meeting place for the convenience of the employee-villagers, who, by virtue of their employment in the community, were isolated from other public facilities (R. 8, 10; 35, 38).[6]

[5] Acme owns about 158 such houses, Stowe 100, Linford and Perfection each own about 75 houses (R. 4; 34).

[6] Prior to the erection of the building in 1937, a group of employees, representing a fraternal order, known as the

Control and rental of the P. O. S. of A. building is vested in an agent of the employers, D. P. Stowe (R. 4, 5; 30, 100). However, officers of the P. O. S. of A. were permitted in practice to exercise full control over the use of the hall, and they gave permission to other organizations and groups to use the hall upon request, without interference by the employers (R. 9; 43-44, 45, 48). The hall was used not only for meetings of the fraternal order but also, on numerous occasions, for other community and employee activities, such as church banquets, Ladies Aid Society meetings, Christmas parties for school children, and to house a safety school conducted by the employers for their employees. (R. 9; 43-44).

In December 1944, the companies' employees began to organize and sought the assistance of the Textile Workers Union of America, affiliated with

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Patriotic Order Sons of America, or P. O. S. of A., of which many of the employers' employees were members, attempted to purchase the land from the employers for the purpose of erecting such a building which could be used for meetings of the order, and other types of meetings (R. 48, 35, 38, 40-41). The employers advised the group that they planned to build a building containing a post office and stores on the site, and offered to add an additional story to the structure which could be used by the P. O. S. of A. as a meeting hall (*ibid.*). The hall was to be made available rent free, since, as a representative of the employers testified at the hearing, "the revenue from those stores would take care of the expenses of the building" (R. 35, 48). Before the building was erected meetings of the fraternal order were held in the schoolhouse auditorium (R. 8; 42, 48).

the C. I. O., hereinafter called the Union (R. 4, 5; 78). Shortly thereafter, at the request of George W. Gainey, a Stowe employee who had assumed leadership of the organizational drive,[1] Robert Harris, a national representative of the Union, arrived in North Belmont to arrange a mass meeting of Stowe employees (R. 5-6; 77-78). After conferring with Gainey and others as to convenient places in town for holding such a meeting, Harris approached O. R. Stewart, an official of P. O. S. of A., for the purpose of obtaining the use of the P. O. S. of A. hall (R. 6; 45-46, 48, 78-79). Stewart referred him to President Black of the P. O. S. of A. (*ibid.*). On January 22, 1945, Harris went to Black and, after identifying himself as a representative of the Union, asked for permission to use the hall on the following Sunday in order that the employees of Stowe might meet and complete their union organizing campaign. Black informed Harris that the Union could use the hall and requested the payment of a nominal sum for the janitor's fee. Harris offered to pay more and Black left the matter to him. When Harris stressed the importance of a definite commitment for the use of the hall because leaflets announcing the meeting place had to be prepared and distributed, Black assured him that

[1] Gainey was, as the Board and the court below found, subsequently discharged because of his union activities. His discharge is not an issue in this proceeding.

he was head of the lodge and his word was final. (R. 6; 79-80.) Harris thereupon had leaflets mimeographed and distributed inviting Stowe employees to attend a union meeting at the P. O. S. of A. hall on Sunday, January 28 (R. 6; 80, 116).

On January 23, Stewart asked Black what he had done about Harris' request for use of the P. O. S. of A. hall. When Black informed him that he had given Harris permission to use the hall, Stewart replied, "You shouldn't have done it for he ain't nothing but a Textile organizer". (R. 6-7; 46.) Black then reported the matter to Superintendent Cauble of the Acme mill (R. 7; 46). Cauble instructed him to do nothing further until Cauble had conferred with the "officials" at Belmont (R. 7; 46). Later that day, Cauble notified Black that D. P Stowe, the employers' agent in charge of the P. O. S. of A. building, would communicate with Stewart that evening (R. 7; 46). Thereafter Stewart was summoned to D. P. Stowe's office (R. 7; 49).[5] D. P. Stowe informed Stewart that the employers had built the P. O. S. of A. hall as a place for meetings of that organization and "meetings of that type" and if any other meetings were to be held there, "we were to make the arrangements here." When D. P. Stowe asked

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[5] J. Harold Litteberger, a ranking officer of the Perfection, Linford and Acme Companies, was also present at this interview (R. 4; 30, 49).

Stewart why he had given Harris permission to hold a meeting there, Stewart answered that Black, who had referred Harris to him, did not know the latter was a union organizer. Stowe thereupon instructed Stewart to inform Harris that "the building would not be available." (R. 7; 49-50.)

On January 26, after the leaflets announcing that a union meeting would be held in the P. O. S. of A. hall had been distributed, Black, on instructions from Stewart, notified Harris that he had received orders from D. P. Stowe not to permit the Union to use the hall "under any circumstances" (R. 7; 49, 81). Harris then sought to obtain permission to use the schoolhouse from J. W. Miller, who was chairman of the School Board and also superintendent of the Perfection Mill (R. 7-8; 82-83, 114). Miller told Harris that it was impossible to heat the schoolhouse because of a shortage of coal. When Harris stated that a fire was unnecessary, Miller informed him that D. P. Stowe had issued instructions not to permit the Union to use the schoolhouse for its meeting. (R. 7-8; 82-83.) Harris then sought permission to use the theater, also owned by the employers, for the meeting, but was informed by the manager that he was not permitted to allow the use of the theater for any purpose other than the showing of pictures (R. 8; 84). Frustrated in their efforts to find a sheltered meeting place in the town, the employees held the school

nied meeting on the street outside the P. O. S. of A. building (R. 7; 81).[9]

The Board found that in view of the employers' practice of permitting the hall to be used by all other groups and organizations, their refusal to allow its use for organizational purposes "constituted unlawful disparity of treatment and discrimination against the Union" (R. 9). It further found on the basis of the foregoing facts, together with its findings (R. 18-19) that Stowe Spinning Company had discriminatorily discharged four employees for the purpose of discouraging membership in and activity on behalf of the Union,[10] and had interfered with the self-organizational freedom of the employees in violation of Section 8 (1) by interrogating employees concerning their union membership while seeking to dissuade them from joining the union (R. 19),[11] that the "sole pur-

[9] Because of the unavailability of indoor meeting places no further union meetings have been held in North Belmont (R. 85-86).

[10] These findings were sustained by the court below (R. 145-147), which decreed enforcement of the Board's order requiring reinstatement of the discharged employees with back pay. They are not open to challenge in this case, this Court having denied certiorari to review the question whether these findings are supported by substantial evidence, note 1, *supra*.

[11] The Company did not seek certiorari to review this finding of the Board. See Brief for the National Labor Relations Board in Opposition, No. 656, October Term, 1947, p. 21, note 16.

pose" of Stowe's withdrawal, on behalf of the employers, of permission to use the hall for a union meeting, "was to impede, prevent and discourage self-organization and collective bargaining by the [companies'] employees within the meaning of Section 7 of the Act" (R. 12).

The Board, as an alternative ground for its decision, concluded that under the circumstances of this case, irrespective of the employers' motive (R. 12),

> by refusing to permit their employees to exercise the right to meet on company-owned property for the purpose of holding a union meeting, when no other suitable property in the community was available for the purpose, the [employers] have placed an unreasonable impediment on freedom of communication and of assembly essential to the exercise of employees' rights guaranteed by Section 7 of the Act. By their conduct in revoking the grant of the privilege to use the hall and thus denying the use of the hall to the Union, the [employers] interfered with, restrained and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8 (1) thereof.

In support of this conclusion the Board pointed out (R. 10):

> The "right to self-organization" is more than an intangible concept. The history of labor organization has established a pattern of

> methods almost universally utilized by employees in self-organization, deprivation of any one of which makes inroads upon the "right." Foremost among these methods is the general meeting,* the *sine qua non* of all true collective action, the basic constitutional right of peaceable assembly. * * * by refusing to permit the Union to use the only available meeting place in the community, a hall erected and used by the [employers] for the benefit of citizens isolated from other public facilities by virtue of their employment in the community, the [employers] in fact deprived their employees of this basic right. The [employers] do not claim that "inconvenience" or "dislocation of property rights" would result from the Union's use of its property.* Indeed, no reason at all was offered by the [employers'] agent Stowe for countermanding Black's grant of permission to Harris to use the hall. Against the bare property right urged by the [employers] the necessity of the employees for a place to hold an organizational meeting clearly preponderates.*

The Board rejected the contention, advanced in the opinion of the dissenting member of the Board (R. 23-24), that the employers were required to deny permission to the Union to use the hall for a meeting by virtue of the provisions of Section 8 (2) of the Act which prohibit an employer from granting "support" to a labor organization (R. 11-12).

*Footnotes omitted.

The Board stated that, "in a company town, where all meeting facilities are owned by the employer, the use of such facilities by a labor organization is necessary if the employees are really to be free to exercise their rights under the Act," (R. 11), and consequently, under such circumstances, the mere grant of a meeting place to a union by an employer would not in and of itself constitute unlawful assistance to that union (R. 11). The Board pointed out that this was particularly true where, as here, the Union offered to pay for the hall (R. 11-12).[12]

On the basis of the foregoing findings the Board ordered Stowe Spinning Company, Acme Spinning Company, Perfection Spinning Company and Linford Mills, Inc., to cease and desist from refusing to permit the use of the P. O. S. of A. hall by their employees or by the Textile Workers Union of America, C. I. O., or by any other labor organization for purposes of self-organization and collective bargaining; and upon request, to permit the hall to be used for such purposes and to post appropriate notices (R. 21-22).

On July 16, 1947, the Board filed in the court below a petition to enforce the Board's order (R. 129-136). On December 22, 1947, the court issued

[12] In this connection the Board (R. 12, n. 18) referred to its decision in *Matter of Standard Oil Company of California*, 61 N. L. R. B. 1251, 1284, n. 56, in which it approved the use of an employer owned hall by a labor organization for regular meetings where the labor organization paid a nominal amount yearly for such use.

its opinion (R. 137-147), and on the same day entered its decree (R. 148-149), in which it set aside the Board's order against Acme Spinning Company, Perfection Spinning Company and Linford Mills, Inc., and set aside the Board's order against Stowe Spinning Company insofar as it required Stowe to make the P. O. S. of A. hall available for self-organizational meetings. The court agreed with the Board's findings that in refusing to sanction the use of the hall for a union meeting, the employers were motivated by a desire to impede unionization (R. 139-140), and were denying to the Union facilities which they regularly made available to all other groups and organizations (R. 139-141). The court rejected, however, the Board's conclusion that by exercising their property rights in this fashion the employers had violated Section 8 (1) of the Act. The court stated that although the refusal to grant use of the hall was "inspired by hostility to the union," since an employer is privileged in the exercise of the right of freedom of speech to oppose unionization "he may surely decline to perform an affirmative act which will encourage and assist a union in its organizational efforts" (R. 140). The court held that "There is no general provision of the Act which requires an employer to treat a labor union in the same manner as it treats other persons or organizations which are not concerned with the interests or activities of labor" (R. 139); "if the owners had freely given

the use of the hall to the union as it had been given in the past to the patriotic order and to other social gatherings, it might well have been argued that an infraction of the statute had occurred" (R. 141). In the latter respect the court agreed with the dissenting Board member that if the employers had permitted the Union to use the hall, the employers would have risked a charge that they had thereby violated Section 8 (2) of the Act (R. 141-142). It concluded that the Board's order violated the due process clause of the Fifth Amendment by compelling "the companies to surrender their other [than plant] property against their will for uses of which they did not approve" (R. 145, 142).

## SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. In holding that the Board's order requiring the employers to make the P. O. S. of A. hall available for union meetings deprives the employers of their property without due process of law.

2. In holding that an employer may properly withhold from use by a labor organization a meeting hall which is available for use by all persons and organizations not engaged in labor activities.

3. In holding that in a company-town, the employer may, for the sole purpose of impeding a union's organizational efforts, deny to the union access to a hall which the employer owns, when the

hall is the only sheltered place in town in which meetings can be conducted.

4. In setting aside and denying enforcement to the Board's order.

## SUMMARY OF ARGUMENT

I

In the *Republic* and *Le Tourneau* cases, 324 U. S. 793, this Court held that unreasonable restrictions upon the exercise of self-organizational rights, when imposed by employers through their control over property, were violative of the Act. In the instant case the Board found that the employers, who owned the only sheltered meeting place in the company town and permitted its use for all other types of meetings, by refusing to permit the hall to be used for a union meeting unreasonably restricted the opportunity of employees to meet freely for the purpose of discussing unionization and perfecting organization.

The Board's conclusion that the restriction imposed by the employers was unreasonable rests upon a balancing of the detriment to the statutory interests of employees which flows from the restriction, against the need for such restriction to protect legitimate employer interests, an approach approved in the *Republic* and *Le Tourneau* cases. In the instant case the restriction upon the use of the meeting hall was tantamount to denial to the employees of all opportunity to discuss unionization

in public assembly. Moreover, since the employers freely permitted the hall to be used for all other types of meetings, here, unlike the *Republic* and *Le Tourneau* cases, the employers do not even claim that the restriction is necessary to protect legitimate business or property interests, or that removal of the restriction would result in any inconvenience, risk or damage to them.

In setting aside the Board's order the court below held that the restriction imposed by the employers was not subject to challenge by the Board since the restriction was imposed as an incident of the employers' ownership of their property, and, as such, was beyond the bounds of legislative regulation. In the *Republic* and *Le Tourneau* cases, however, and in innumerable others, this Court has held that the due process clause does not immunize property rights from reasonable legislative regulation. Here, as in *Marsh* v. *Alabama*, 326 U. S. 501, 505-506, the necessity of protecting the rights of others affords ample basis for circumscribing the unfettered mastery which the employer-owner of a company town may exercise over his property.

## II

Employer restrictions upon self-organizational activity of employees which are imposed not to protect legitimate business or property interests, but solely to hamper unionization, infringe both the letter and the spirit of the Act. Restrictions so

motivated have, therefore, been held to violate the Act in every case except this one. Here the employers, while permitting the hall to be used for all other types of meetings, barred its use for a union meeting solely because of their opposition to the exercise of organizational rights by the employees. The employers' discriminatory interference with the Union's use of the hall for a meeting was part of a course of conduct, including the discriminatory discharge of four employees, which was designed to and did frustrate the employees' self-organizational efforts. Such exercise of property rights to interfere with the statutory rights of others cannot be deemed to comport with the statute.

## ARGUMENT

### THE BOARD PROPERLY FOUND THAT BY REFUSING TO PERMIT THE MEETING HALL TO BE USED FOR UNION MEETINGS THE EMPLOYERS INTERFERED WITH THE EXERCISE OF RIGHTS GUARANTEED EMPLOYEES IN SECTION 7 AND THEREBY VIOLATED SECTION 8 (1) OF THE ACT

#### I. The Board Properly Found That by Foreclosing Access to the Only Sheltered Meeting Place in Town the Employers Imposed an Unreasonable Impediment on the Exercise of Self-Organizational Rights Guaranteed in Section 7 of the Act

In *Republic Aviation Corp.* v. *National Labor Relations Board*, and *National Labor Relations Board* v. *LeTourneau Co. of Georgia*, 324 U. S. 793, this Court recognized that the right to self-organization guaranteed employees in Section 7 of the National Labor Relations Act comprehends the

right to solicit membership in labor organizations and to distribute union literature. In *Thomas* v. *Collins*, 323 U. S. 516, 533, the Court pointed out that the right guaranteed by Section 7, "to organize freely for collective bargaining * * * comprehends whatever may be appropriate and lawful to accomplish and maintain such organization." The Court specifically noted in that case (323 U. S. at p. 534), that the right of employees "fully and freely to discuss and be informed concerning [their] choice [of bargaining representatives], privately or in public assembly," is included within the guarantees of Section 7, as is the necessarily correlative right of union officials "to discuss with and inform the employees concerning matters involved in their choice."

In the *Republic* and *LeTourneau* cases, *supra*, this Court held that Section 8 (1) of the Act prohibits employer interference with the rights guaranteed in Section 7 where such interference takes the form of unreasonably restricting opportunity for their exercise. In those cases, as in this case, impediments to the exercise of self-organizational rights by employees were imposed by employers through the exercise of their property rights.

In the *Republic* case the employer prohibited employees from soliciting union membership in the plant on their own free time. 324 U. S., at pp. 794-795. In the *LeTourneau* case the employer prohibited employees from distributing union litera-

ture on employer-owned parking lots. 324 U. S., at pp. 796-797. In both cases the Board rejected the contention of the employers that their property rights were decisive of the validity of their refusals to permit their premises to be used for union activities.[13] The Board assessed the impact of the restrictions imposed by the employers upon the opportunity for effective exercise of employee rights guaranteed by the Act, and, against this detriment to employee interests, balanced the employers' need for such restrictions to protect their legitimate interests. In both cases the Board concluded that, on balance, the employers' property interests were insufficient to justify the impediments upon union activity which flowed from the restrictions imposed by the employers on the use of their property by employees.

This Court upheld the power of the Board to work out in this manner an adjustment between the need of employees for "opportunity to organize" and the need of employers "to maintain discipline

[13] In its opinion in the *LeTourneau* case, 54 N. L. R. B. 1253, 1259, the Board quoted and relied upon the opinion of the Circuit Court of Appeals for the Second Circuit in *National Labor Relations Board* v. *Cities Service Oil Co.*, 122 F. 2d 149, 152: "It is not every interference with property rights that is within the Fifth Amendment and * * * Inconvenience, or even some dislocation of property rights, may be necessary in order to safeguard the right to collective bargaining." The paragraph of the Board's opinion containing this excerpt is quoted with approval in the Court's opinion in the *LeTourneau case*, 324 U. S. 793, 802, n. 8.

in their establishments". 324 U. S., at pp. 797-798. The Court held that since the Board had adequately explicated the reasoning which led it to conclude that the employees must be permitted to conduct the particular organizational activities there involved on the employers' property if they were to have adequate opportunity to exercise their self-organizational rights, and since the employers had shown no special circumstances by virtue of which the proposed employee activities on their property would have resulted in substantial injury to legitimate business interests, the Board's conclusions were proper.

As in the *LeTourneau* case, the Board in the instant case set forth in full the reasoning which led it to conclude that the employers' refusal to permit the P. O. S. of A. hall to be used for union meetings was an unwarranted and illegal interference with the statutory right of employees freely to assemble for purposes of discussing unionization (*supra*, pp. 10-11).

The Board found (*supra*, p. 11), as this Court had earlier noted in *Thomas v. Collins, supra*, p. 18, that discussion of questions of unionization at public meetings is an indispensable attribute of the right to self-organization. It further found (*supra*, p. 11), that without access to an appropriate and convenient sheltered meeting place, opportunity for public discussion among employees of the questions involved in unionization

is drastically curtailed; and the right to self-organization is *pro-tanto* frustrated. The Board noted that the companies controlled the only available meeting places in the company-town; that the P. O. S. of A. hall was itself erected and used by the companies for the benefit of the employee-residents, who were isolated from other meeting places by virtue of their employment in the community; and concluded that by denying to employees the use of the only appropriate sheltered meeting place in the community for discussion of unionization the employers had impeded the exercise of rights guaranteed by the Act and thus imposed a detriment upon interests which the Act was designed to protect.

The Board contrasted the effect of the employers' action upon the opportunity of the employees to exercise their statutory rights with the possible detriment to employer property interests which would flow from permitting the use of the hall for union meetings. It noted that the employers did not even claim that they would suffer any damage or inconvenience if such use were permitted. They stood solely upon their bare property right to exercise complete dominion over premises which they owned, upon their right so to use their property as to frustrate the self-organizational efforts of their employees. The Board concluded that where, as here, denial of access to an employer-owned meeting hall results at least in substantial inconvenience to employees attempting

to exercise their rights under the Act, and where such denial is not necessary to protect any legitimate property or business interests of the employer, the statute requires that access be permitted (R. 12).

The Board's decision, we submit, accords completely with the guiding principles enunciated by this Court in the *Republic* and *LeTourneau* cases. Indeed, this Court's opinion in those cases recognized that a case involving a company town, such as we have here, would have been an even stronger one for the Board. In those cases, the Court pointed out (324 U. S., at p. 798), there was neither evidence nor a finding that the use of the employer's property was necessary to the effective accomplishment of the particular union activities there involved. Neither case, said the Court (324 U. S., at p. 799), "is like a mining or lumber camp where the employees pass their rest as well as their work time on the employer's premises, so that union organization must proceed upon the employer's premises, or be seriously handicapped."

In the instant case, on the other hand, the Board found (*supra*, pp. 10-11), that because the only sheltered meeting places in the community were company-owned, and because the employees were isolated from other public facilities by virtue of their employment in the company-town, the denials of access to the P. O. S. of A. meeting hall was tan-

tamount to denial to them of all opportunity to discuss unionization in public assembly. And the evidence shows that after holding the meeting of January 28, which had been scheduled for the P. O. S. of A. hall, on the street in front of the building, the union has held no further meetings in North Belmont (*supra*, p. 9, n. 9). Denial of access to a meeting place has thus frustrated the exercise of organizational rights by the employees of these employers. Surely, under these circumstances, where denial of access to a meeting hall results in practice in denial to employees of their rights under the Act, the denial of access can be supported, if at all, only upon a showing that to permit the hall to be used for union meetings would endanger important legitimate business or property interests of the employer. See *Republic Aviation Corp.* v. *National Labor Relations Board*, 142 F. 2d 193, 196 (C. C. A. 2), affirmed, 324 U. S. 793, 798; *National Labor Relations Board* v. *Lake Superior Lumber Corp.*, 167 F. 2d 147, 151-152 (C. C. A. 6). Yet in the instant case, again unlike the *Republic* and *LeTourneau* cases (see p. 27, *infra*), the employers do not even claim that they would suffer any inconvenience, loss or damage to their business or property interests if access to the P. O. S. of A. hall for the purpose of union meetings were permitted.

The court below, however, refused to test the Board's decision in the instant case by the stand-

ards laid down in the *Republic* and *LeTourneau* cases. Instead, the court found support in the decision of this Court in *National Labor Relations Board v. Virginia Electric & Power Co.*, 314 U. S. 469, holding that employers may, absent coercion, exercise their right to freedom of speech on any side of a labor problem or controversy, for the conduct of the employers in refusing to permit their property to be used for union meetings, since such use would, contrary to the employers' desires, "encourage and assist a union in its organizational efforts" (R. 140). The flaw in the analogy thus drawn by the court below between opposition to unionization effectuated through the exercise of the employer's right to freedom of speech, and frustration of self-organizational efforts effectuated through the exercise of the employer's control over property, lies in the failure to observe the distinction, often and uniformly drawn by this Court, between the civil liberties explicitly safeguarded by the First Amendment on the one hand and rights which arise from the ownership of property on the other. Freedom of speech, as the cases hold, is entitled to greater protection from legislative regulation than any claim of unfettered right to do as one wills with one's property. To equate the employer's right to freedom of speech with his right to exercise absolute dominion over property is no more valid than to classify "the privileges protected by the First Amendment along with the

wares and merchandise of hucksters and peddlers and treat * * * them all alike." *Murdock* v. *Pennsylvania*, 319 U. S. 105, 115.

That property rights are subject to reasonable legislative regulations which to some extent may impair the owner's dominion over his property is established, *inter alia*, by the *Republic* and *LeTourneau* cases themselves, for the employers there also relied on their right to unrestricted control of their property. The due process clause does not immunize the right to deal with physical property from limitations contained in reasonable legislative regulations pursuant to valid constitutional powers, as many cases attest. *Euclid* v. *Ambler Realty Co.*, 272 U. S. 365; *Block* v. *Hirsh*, 256 U. S. 135; *Marcus Brown Co.* v. *Feldman*, 256 U. S. 170; *Hamilton* v. *Kentucky Distilleries Co.*, 251 U. S. 146; *Woods* v. *Miller Co.*, 333 U. S. 138; *Champlin Refining Co.* v. *Corporation Commission*, 286 U. S. 210; *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U. S. 381; *North American Co.* v. *Securities & Exchange Commission*, 327 U. S. 686; *United States* v. *Carolene Products Co.*, 304 U. S. 144; *Carolene Products Co.* v. *United States*, 323 U. S. 18. In sustaining the National Labor Relations Act, as well as the Railway Labor Act, this Court held that Congress was empowered to prohibit employers from exercising their property rights and dominion over jobs in such fashion as to interfere with the self-organizational freedom of employees.

*National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 33-34; *Texas & N. O. R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548, 570-571. Here, as we have seen, there was no actual effect upon the value of respondent's property; indeed the union was willing to pay for its use of the hall.

The court below attempted to distinguish the *Republic* and *LeTourneau* cases on the ground that "The conflict in the fundamental rights of the parties to labor disputes [in those cases] had little relation to the employer's property and caused little or no interference with its devotion to the purposes of the owner" (R. 144).[14] The distinction is without substance. There is no claim and no showing in the instant case that if the Union had been permitted to hire the hall as it requested, the employers would have suffered even the slightest inconvenience or interference either with their business or with any uses which they desired to make of the hall. The Union offered to pay even more than the cost of the janitor's fee (R. 6; 79-80). There is no claim or showing that the Union was denied permission to use the hall because the time of the meeting was inappropriate, or because the meeting would have conflicted with any other scheduled ac-

[14] The court below stated that the union activities involved in the *Republic* and *LeTourneau* cases, "did not interfere substantially with the business of the employer, or inconvenience him at all" (R. 144).

tivity. The Union was advised that it could not use the hall "under any circumstances". (*supra*, p. 9), and, as the Board found (R. 12), the only reason for the employers' refusal was their desire to impede employee self-organization.

Moreover, the court below is in error with respect to the impact of the holding in the *LeTourneau* case upon the business interests of the employer. In that case the employer banned literature distribution of all kinds on the parking lots to avoid littering and pilfering from parked autos by distributors. 324 U. S., at p. 797. The Board, in its decision, did not deny that if distribution of union literature was permitted some littering might result. 54 N. L. R. B., at pp. 1261-1262. Requiring the employer to permit distribution of union literature on the parking lots, therefore, imposed upon the employer the alternative of making and enforcing a rule against littering or paying the cost of cleaning litter from the lots. This Court sustained the Board's holding that despite the detriment to employer property interests the necessity of affording adequate opportunities for the exercise of self-organizational rights required that permission be granted for the distribution of union literature on the parking lots. Since there was some detriment to the employer in *LeTourneau* but none to the employer here, affirmance of the Board's order here follows *a fortiori* from this Court's *LeTourneau* decision.

Recognition of competing constitutional and statutory rights of others often marks a limit to the absolute dominion of a property owner. *Shelley v. Kraemer*, 334 U. S. 1. Particularly is this true where, as in this case, the dominion of the property owner extends to an entire town, and places him astride the channels of communication and assembly available to a whole community of citizens. In *Marsh v. Alabama*, 326 U. S. 501, this Court held that a state violated the Constitution by punishing criminally a Jehovah's Witness who, contrary to the command of the corporation which owned a company town, utilized the streets of the town for the purpose of distributing religious literature. In response to the contention that the state's action was valid because the corporation, in the exercise of its property rights over the streets, could limit their use to purposes of which it approved, the Court said (326 U. S., at pp. 505-506, 509):

> We do not agree that the corporation's property interests settle the question. * * * Ownership does not always mean absolute dominion. The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it. Cf. *Republic Aviation Corp. v. Labor Board*, 324 U. S. 793, 798, 802, n. 8.

* * *

> When we balance the Constitutional rights of owners of property against those of the people to enjoy freedom of press and religion . . . we remain mindful of the fact that the latter occupy a preferred position.

The citation of the *Republic* case in the *Marsh* case, we believe, imports recognition that the limitations imposed by the National Labor Relations Act upon the property rights of employers in behalf of the exercises by employees of the rights of freedom of speech, press and assembly, where self-organizational matters are involved, are analogous to the limitations imposed by the Constitution upon state and federal governments in behalf of the civil liberties safeguarded by the First and Fourteenth Amendments. Cf. *Thomas* v. *Collins*, 323 U. S. 516, 533-534. If a municipality, rather than a private employer owned the P. O. S. of A. hall, and, while permitting its use for all other types of public meetings, had denied its use for the purpose of a union meeting, there could be little doubt that the denial would transgress constitutional limitations. *Marsh* v. *Alabama*, 326 U. S. 501, 504-505; *Jamison* v. *Texas*, 318 U. S. 413; *Hague* v. *C. I. O.*, 307 U. S. 496; *Saia* v. *New York*, decided June 7, 1948, No. 504, 1947 Term; *Sellers* v. *Johnson*, 163 F. 2d 877 (C. C. A. 8), certiorari denied, 332 U. S. 851. The Board is of the view that denial of use of the hall for this purpose by the employer owners of the entire community, because of their hostility to unionization, is no more consistent with the poli-

cies of the Act than would a similar denial by a municipality be consistent with the policies of the Constitution.[15]

The court below also attempted to distinguish the *Republic* and *LeTourneau* cases on the ground that there "The premises of the employer were necessarily occupied by the whole group of employees assembled to operate the business" (R. 144), and the *Marsh* case on the ground that there the sidewalks "were freely used by the general public" (R. 143). To the extent that the court thus implied that there had been a dedication of the employer's property to employees in the *Republic* and *LeTourneau* cases, and to the public in the *Marsh* case, different in kind from the dedication of the P. O. S. of A. hall by the employers in this case, the court erred. In the *Marsh* case, this Court expressly refused to disturb the holding of the Supreme Court of Alabama that the company had not dedicated its streets to the public, and that the Jehovah's Witness was therefore a trespasser

[15] This does not mean, as the court below asserted (R. 142), that employers must maintain a building for union purposes if no other convenient meeting place is available. Just as a municipality need not build or maintain a public meeting hall to satisfy its obligations under the Constitution, so the employer in a company town need not build or maintain one to satisfy his obligations under the Act. Only where such an employer has erected and maintains a hall which he deems appropriate and permits to be used for meetings of employees and others, does the Act require that he not prohibit its use for union meetings.

thereon (326 U. S., at p. 505, n. 2). To the extent that there was a dedication in the *Marsh* case, or in the *Republic* and *LeTourneau* cases, there was dedication in the instant case.

In company-towns, as this case shows, meeting halls, no less than houses or streets, are appurtenances to the employer's business operations.[16] Considerations similar to those which move employers whose plants are located far from a city to provide large parking lots for employee cars, move employer-owners of company towns to maintain meeting halls for employee-residents. *LeTourneau* case, *supra;* see also, *National Labor Relations Board v. Lake Superior Lumber Corp.*, 167 F. 2d 147 (C. C. A. 6). The P. O. S. of A. hall in this case was erected in the first place for the convenience of employees, who were required, for the employers' advantage, to live in the company-town. Indeed, the employers permitted the officers of the P. O. S. of A. to exercise full control over the use of the hall; the P. O. S. of A. freely permitted groups of employees and others to use the hall without objection or interference by the employers (R. 9; 43-44, 45, 48). Never, save in the case of the Union, did the employers override the action of the P. O. S. of A. in granting permission to any group to use the hall as a meeting place. The P. O. S. of A. meeting hall was thus used by the em-

[16] Lahne, Herbert J., *The Cotton Mill Workers* (Farrar & Rinehart, Inc., 1944), p. 51.

ployee-townsfolk in this case no less freely than the streets in the *Marsh* case were used by the general public. Just as in the *Marsh* case the company objected not to the presence of the Jehovah's Witness on the street, but only to her activity there, so in this case the employers objected not to the presence of the group in the hall, but only to the purpose of their meeting. Here, as in that case, property rights were invoked not to protect property interests, but to frustrate the exercise of constitutional rights by others.

The court below also erred in finding in Section 8 (2) any justification for the employers' refusal to permit the union to use the hall for a meeting. In the *LeTourneau* case, *supra*, the Circuit Court of Appeals for the Fifth Circuit similarly held (143 F. 2d 67, 68), that Section 8 (2) justified the employer in refusing to permit company owned parking lots to be used as a "theater" for self-organizational activities. The point was pressed in this Court by the employer,[17] was answered fully by the Board in its brief,[18] and was overruled *sub silentio*. Compare, *Medo Photo Supply Corp.* v. *National Labor Relations Board*, 321 U. S. 678, 686-687. In the *Republic* case, *supra*, the employer defended his refusal to permit union steward but-

[17] See Brief for the LeTourneau Co., No. 452, October Term, 1944, pp. 19-20.

[18] See Brief for the National Labor Relations Board, in No. 452, October Term, 1944, pp. 39-44.

tons to be worn in the plant on the ground that to permit such display prior to recognition of the union as bargaining agent might jeopardize the employer's neutrality (324 U. S. 793, 801). This Court sustained the Board's finding that the wearing of steward buttons would not compromise the employer's neutrality and rejected the employer's contention (324 U. S., at p. 803). In this case, as in the *Republic* case, the Board fully explicated the reasoning upon which it predicated its conclusion that the grant of permission to use the hall for union meetings under the circumstances of this case, could not be deemed to constitute illegal support of the union, and could not jeopardize the employers' neutrality (*supra*, pp. 11-12). In disregarding these findings and conclusions of the Board and substituting inferences and conclusions of its own the court below violated well settled principles which govern review of Board orders by the courts. *National Labor Relations Board* v. *Hearst Publications, Inc.*, 322 U. S. 111, 130; *National Labor Relations Board* v. *E. C. Atkins & Co.*, 331 U. S. 398; *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 331 U. S. 416.

**II. The Board Properly Found That by Discriminatorily Denying Access to the Meeting Hall for the Purpose of Impeding Self-Organizational Efforts Among the Employees the Employers Violated Section 8 (1) of the Act**

In any event, respondents' purpose to defeat unionization (a purpose not present in the *Republic* or *Le Tourneau* cases) makes the refusal to allow use of the hall unlawful.

In the *Republic* case (324 U. S., at p. 798), this Court pointed out that Congress in enacting the National Labor Relations Act, "did not undertake the impossible task of specifying in precise and unmistakable language each incident which would constitute an unfair labor practice. On the contrary, that Act left to the Board the work of applying the Act's general prohibitory language in the light of the infinite combinations of events which might be charged as violative of its terms."[19] In thus broadly directing the Board to put an end to employer interference with employee efforts to organize and bargain collectively, Congress did not withhold from the Board power to eradicate those interferences which flowed from exercises of property rights by employer-owners of company-towns. In *Marsh* v. *Alabama*, 326 U. S. 501, 508-509, note 6, this Court took specific notice of the history of "suppression of civil liberties in company towns and the need of those who live there for Constitutional protection." As the authorities referred to by the Court in that opinion disclose, outstanding

[19] Compare S. Rep. No. 573, 74th Cong., 1st Sess., p. 10.

among the liberties suppressed was the freedom of employees to organize and bargain collectively, to solicit members and to meet and perfect their organizations. Prior to the passage of the Act one of the typical methods of frustrating unionization utilized by employers in company-towns was the method employed here—refusing to permit meeting halls in the town to be used for union activities.[20] Cf. *Hague* v. *C. I. O.*, 307 U. S. 496.

Time and again the Board and the courts have held that employers in company towns who exercise their property rights in such fashion as to interfere with legitimate union activity thereby violate the Act.[21] The Board believes that elimination of the

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[20] Mitchell, George Sinclair, *Textile Unionism and the South* (University of North Carolina Press, 1931), p. 84; Fitch, John A., *The Causes of Industrial Unrest* (Harper & Bros., 1924), pp. 189-191, 197.

[21] *Matter of Harlan Fuel Co.*, 8 N. L. R. B. 25, 31-32, 63, (where the employer-owner of a company town denied access to a union representative); *Matter of West Kentucky Coal Co.*, 10 N. L. R. B. 88, 105-106, 133 (*idem.*), enforced, 116 F. 2d 816 (C. C. A. 6); *Matter of American Cyanamid Co.*, 37 N. L. R. B. 578, 585-586, 588 (where the employer-owner of a company town segregated the white and colored employees to prevent interchange of union information); *Matter of Ozan Lumber Co.*, 42 N. L. R. B. 1073, 1079-1081 (*idem.*); *Matter of Weyerhaeuser Timber Co.*, 31 N. L. R. B. 258, 264-267, 270 (where the employer-owner of a logging camp denied access to union representatives); *Matter of Cities Service Oil Co.*, 25 N. L. R. B. 36, 57 (where a shipowner denied permission to a union representative to come on board ships), enforced, 122 F. 2d 149, 152 (C. C. A. 2); *Matter of Richfield Oil Corp.*, 49 N. L. R. B. 593 (*idem.*), enforced 143 F. 2d 860 (C. C. A. 9); *Matter of Seas Shipping Co.*, 4 N. L. R. B. 757 (*idem.*).

practice of denying the use of meeting halls in company towns for the purpose of union meetings, like elimination of the practice of excluding union organizers from company towns altogether, is essential to secure to the many employees who live in such towns[22] adequate opportunity to exercise the rights guaranteed to them by the Act. The decision below erects an unwarranted barrier to the accomplishment of the full objectives of Congress.

In imposing broad limitations upon the exercise by employers of their powers over jobs and property in the interest of safeguarding employee rights to self-organization it may be assumed, as the Board and this Court have held,[23] that Congress did not ignore competing employer business or property interests. Its mandate need not therefore be read as prohibiting all employer imposed restrictions upon employee self-organizational activity, for some restrictions, such as prohibitions upon union solicitation during working hours, may be necessary to preserve plant discipline, which, like opportunity to organize, is an essential element "in a balanced society" *Republic* case, *supra*, 324 U. S., at p. 798. When restrictions upon union activity on an employer's property are imposed to protect some such competing employer interest, it

[22] *See Marsh v. Alabama*, 326 U. S. 501, 508; *Housing by Employers in the United States* (U. S. Department of Labor, Bull. No. 263).

[23] *Matter of Peyton Packing Co.*, 49 N. L. R. B. 828; *Republic* case, *supra*, 324 U. S., at pp. 797-798; see pp. 20, 23, 27, *supra*.

is for the Board, as the *Republic* and *LeTourneau* cases hold, to balance the competing interests and award priority in the light of the relative benefits and disadvantages which accrue from the restriction.

When, however, restrictions upon union activity are imposed by an employer through the exercise of powers over jobs or property, not to protect any legitimate business or property interest, or to protect the employer's neutrality, but solely to hamper employee opportunities to exercise the rights guaranteed them by the Act, effectuation of the policies of the Act is met by no competing considerations. For this reason, the Circuit Courts of Appeals have uniformly, except in the instant case, supported the Board's view enunciated in the *Peyton Packing* case, 49 N. L. R. B. 828, 843-844,[24] that even those restrictions upon union activities on an employer's premises which the employer may properly impose to protect legitimate business or property interests are violative of Section 8 (1) of the Act if they are imposed for the purpose of impeding or frustrating unionization. Thus, in the *LeTourneau* case, the Fifth Circuit stated that if the employer's refusal to permit distribution of union literature on the parking lots had been discriminatorily motivated, or if the employer had permitted other types of literature to be distributed there and had drawn the line at union litera-

[24] Quoted with approval in *Republic Aviation Corp.* v. *National Labor Relations Board*, 324 U. S. 793, 803-804, n. 10

ture, his conduct would have been violative of the Act (143 F. 2d, at p. 68).

In *National Labor Relations Board* v. *Gallup American Coal Co.*, 131 F. 2d 665, 667, the Circuit Court of Appeals for the Tenth Circuit, without questioning the right of the employer to prohibit all displays of advertising on stone boulders located on his premises, held that the employer violated Section 8 (1) of the Act by prohibiting the painting of union signs on the boulders while permitting other types of advertising to be painted there. In *National Labor Relations Board* v. *Columbia Products Corp.*, 141 F. 2d 687, 688, the Circuit Court of Appeals for the Second Circuit, while conceding the right of the employer to make and enforce rules prohibiting employees from visiting other departments during lunch periods in the interests of plant discipline, held the application of such a rule to prevent an employee from visiting other departments for the purpose of electioneering for a labor organization was violative of the Act when the rule had never been enforced as to employees who visited other departments for any other purpose and when the employer's motive was not to maintain discipline but rather to impede unionization. In *National Labor Relations Board* v. *Peyton Packing Co.*, 142 F. 2d 1009, 1010 (C. C. A. 5), certiorari denied, 323 U. S. 730; *National Labor Relations Board* v. *William Davies Co.*, 135 F. 2d 179, 181 (C. C. A. 7); and *Carter Carburetor Corp.* v. *Na-*

*tional Labor Relations Board*, 140 F. 2d 714, 716 (C. C. A. 8), the Circuit Courts of Appeals for the Fifth, Seventh and Eighth Circuits held that plant rules prohibiting solicitation on company premises on the employee's own time, though otherwise unobjectionable, were, as applied to bar union solicitation, violative of the Act, because they were promulgated for the purpose of impeding unionization.

In the instant case the Board found that the employers' refusal to permit the P. O. S. of A. hall to be used for a union meeting was motivated by a design to impede unionization (R. 9, 12). The court below did not dispute this finding. It impliedly conceded (R. 140), that if the employers had permitted one labor organization to use the hall for meetings while denying its use to another, the Act would thereby have been violated. Cf. *National Labor Relations Board* v. *Waterman Steamship Corp.*, 309 U. S. 206, 224-226; *Westinghouse Electric & Mfg. Co.* v. *National Labor Relations Board*, 112 F. 2d 657, 659-660 (C. C. A. 2), affirmed, 312 U. S. 660; *South Atlantic Steamship Co.* v. *National Labor Relations Board*, 116 F. 2d 480, 482-483 (C. C. A. 5), certiorari denied, 313 U. S. 582. We believe, as the cases cited above (*supra*, pp. 38-39) hold, that where a prohibition upon union activities on employer-owned property is motivated solely by a desire to impede unionization, the restriction is equally invalid under the Act

when it applies to the only labor organization seeking to organize the employees as when it applies to only one of two rival unions. The restriction upon the use of the hall in the instant case, coupled with the discriminatory discharge of four employees, and other unfair labor practices (p. 9, *supra*) was designed to, and did, frustrate the employees' opportunity to organize completely. Such frustration of statutory guarantees, accomplished through the exercise of economic power, without justification save in the existence of the power itself, is in the very teeth of the statute.

## CONCLUSION

For the foregoing reasons it is respectfully submitted that the decision below should be reversed and the cause remanded with directions to enforce the Board's order in full.

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July, 1948.

## APPENDIX

National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. 151, *et seq.*):

* * * * *

### RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

* * * * *

### PREVENTION OF UNFAIR LABOR PRACTICES

SECTION 10. (a) The Board is empowered, as hereinafter provided, to prevent any person

from engaging in any unfair labor practice (listed in section 8) affecting commerce. * * *

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. * * *

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

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(e) * * * The findings of the Board as to the facts, if supported by evidence, shall be conclusive. * * *

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